

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

*County of Lake, Ohio v. Purdue
Pharma L.P., et al.,
Case No. 18-op-45032 (N.D. Ohio)*

*County of Trumbull, Ohio v. Purdue
Pharma, L.P., et al.,
Case No. 18-op-45079 (N.D. Ohio)*

“Track 3 Cases”

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**PHARMACY DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO EXCLUDE CERTAIN EXPERT TESTIMONY BASED ON TRACK ONE
ARGUMENTS**

Plaintiffs Lake County, Ohio and Trumbull County, Ohio are proffering certain expert opinions and testimony in Track Three from many of the same experts offered in Track One.¹ These experts are: Caleb Alexander, David Cutler, Lacey Keller, Katherine Keyes, Anna Lembke, Craig McCann, James Rafalski, and Nancy Young (“Track One Experts”). The Track One Experts are relying on methodologies that are similar or identical to the methodologies they relied on in Track One, and their opinions remain unreliable, irrelevant, flawed, and unhelpful to the trier of fact. For reasons previously briefed in the Track One, the Court should exclude testimony from the Track One Experts pursuant to Rule 702 of the Federal Rules of Evidence.

The Pharmacy Defendants are “mindful that the Court intends to adhere to all rulings made in Track 1.” *See, e.g.*, No. 17-md-2804, Dkt. No. 3325 at 1 n.2. Pharmacy Defendants therefore incorporate by reference all *Daubert* arguments made by Defendants in Track One and rely on the Court’s rulings to the extent it granted any previous *Daubert* motions.

However, the Pharmacy Defendants also respectfully submit that this Court erred to the extent it rejected previously raised *Daubert* arguments and hereby incorporate them to preserve them for appellate review. *See* No. 17-md-2804, Dkt. No. 1858 (Defendants’ Motion to Exclude the “Gateway Hypothesis” Causation Opinions of Anna Lembke and Katherine Keyes); Dkt. No. 1865 (Defendants’ Motion to Exclude Testimony of Caleb Alexander, Katherine Keyes, and Nancy Young Relating to Abatement Costs and Efforts); Dkt. No. 1868 (Defendants’ Motion to Exclude the Marketing Causation Opinions of Anna Lembke and Katherine Keyes); Dkt. No. 1900 (Defendants’ Motion to Exclude James Rafalski’s Opinions and Proposed Testimony); Dkt. No. 1901 (Defendants’ Motion to Exclude David Cutler’s Opinions and Proposed Testimony);

¹ “Track One” consisted of two cases: *The County of Summit, Ohio, et al. v. Purdue Pharma L.P., et al.*, Case No. 18-op-45090 and *The County of Cuyahoga v. Purdue Pharma L.P., et al.*, Case No. 1:18-op-45004.

Dkt. No. 1906 (Defendants' Motion to Exclude Craig McCann's Opinions and Proposed Testimony); Dkt. No. 1914 (Defendants' Motion to Exclude Lacey Keller's Opinions and Proposed Testimony). *See also* Dkt. No. 2492 (Order Denying Defendants' Motion to Exclude Lacy Keller); Dkt. No. 2494 (Order on Defendants' Motions to Exclude James Rafalski and Craig McCann); Dkt. No. 2518 (Order Denying Defendants' Motions to Exclude Katherine Keyes and Anna Lembke); Dkt. No. 2519 (Order Denying Defendants' Motion to Exclude Expert Testimony Regarding Abatement Costs and Efforts); Dkt. No. 2542 (Order Denying Defendants' Motion to Exclude David Cutler); Dkt. No. 2549 (Order Granting in Part Defendants' Motion to Exclude Marketing Causation Opinions of Anna Lembke and Katherine Keyes).

For the reasons identified above, the Court should exclude testimony of Caleb Alexander, David Cutler, Lacey Keller, Katherine Keyes, Anna Lembke, Craig McCann, James Rafalski, and Nancy Young in their entirety.

Dated: July 23, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record on July 23, 2021.

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